

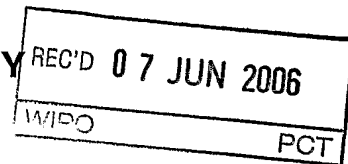
# PATENT COOPERATION TREATY


# PCT

## INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

(Chapter II of the Patent Cooperation Treaty)

(PCT Article 36 and Rule 70)



Applicant's or agent's file reference pp/cb60772		<b>FOR FURTHER ACTION</b>		See Form PCT/PEA/416
International application No. PCT/EP2005/002701		International filing date (day/month/year) 09.03.2005		Priority date (day/month/year) 11.03.2004
International Patent Classification (IPC) or national classification and IPC INV. A23L2/02 A23L2/84				
Applicant GLAXO GROUP LIMITED et al				
<p>1. This report is the international preliminary examination report, established by this International Preliminary Examining Authority under Article 35 and transmitted to the applicant according to Article 36.</p> <p>2. This REPORT consists of a total of 6 sheets, including this cover sheet.</p> <p>3. This report is also accompanied by ANNEXES, comprising:</p> <p>a. <input checked="" type="checkbox"/> sent to the applicant and to the International Bureau) a total of 1 sheets, as follows:</p> <p><input checked="" type="checkbox"/> sheets of the description, claims and/or drawings which have been amended and are the basis of this report and/or sheets containing rectifications authorized by this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions).</p> <p><input type="checkbox"/> sheets which supersede earlier sheets, but which this Authority considers contain an amendment that goes beyond the disclosure in the international application as filed, as indicated in item 4 of Box No. I and the Supplemental Box.</p> <p>b. <input type="checkbox"/> (sent to the International Bureau only) a total of (indicate type and number of electronic carrier(s)) , containing a sequence listing and/or tables related thereto, in electronic form only, as indicated in the Supplemental Box Relating to Sequence Listing (see Section 802 of the Administrative Instructions).</p>				
<p>4. This report contains indications relating to the following items:</p> <p><input checked="" type="checkbox"/> Box No. I Basis of the report</p> <p><input type="checkbox"/> Box No. II Priority</p> <p><input checked="" type="checkbox"/> Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability</p> <p><input type="checkbox"/> Box No. IV Lack of unity of invention</p> <p><input checked="" type="checkbox"/> Box No. V Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement</p> <p><input type="checkbox"/> Box No. VI Certain documents cited</p> <p><input type="checkbox"/> Box No. VII Certain defects in the international application</p> <p><input type="checkbox"/> Box No. VIII Certain observations on the international application</p>				
Date of submission of the demand  28.10.2005		Date of completion of this report  07.06.2006		
Name and mailing address of the international preliminary examining authority:   European Patent Office - P.B. 5818 Patentlaan 2 NL-2280 HV Rijswijk - Pays Bas Tel. +31 70 340 - 2040 Tx: 31 651 epo nl Fax: +31 70 340 - 3016		Authorized officer  Inceisa, L  Telephone No. +31 70 340-3876		



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PCT/EP2005/002701

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**Box No. I Basis of the report**

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1. With regard to the **language**, this report is based on the international application in the language in which it was filed, unless otherwise indicated under this item.
- ☐ This report is based on translations from the original language into the following language , which is the language of a translation furnished for the purposes of:
- ☐ international search (under Rules 12.3 and 23.1(b))
  - ☐ publication of the international application (under Rule 12.4)
  - ☐ international preliminary examination (under Rules 55.2 and/or 55.3)
2. With regard to the **elements**\* of the international application, this report is based on *(replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report)*:

**Description, Pages**

1-13 as originally filed

**Claims, Numbers**

1-8 received on 28.10.2005 with letter of 26.10.2005

☐ a sequence listing and/or any related table(s) - see Supplemental Box Relating to Sequence Listing

3. ☐ The amendments have resulted in the cancellation of:
- ☐ the description, pages
  - ☐ the claims, Nos.
  - ☐ the drawings, sheets/figs
  - ☐ the sequence listing (*specify*):
  - ☐ any table(s) related to sequence listing (*specify*):
4. ☐ This report has been established as if (some of) the amendments annexed to this report and listed below had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).
- ☐ the description, pages
  - ☐ the claims, Nos.
  - ☐ the drawings, sheets/figs
  - ☐ the sequence listing (*specify*):
  - ☐ any table(s) related to sequence listing (*specify*):

\* If item 4 applies, some or all of these sheets may be marked "superseded."

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**Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability**

1. The questions whether the claimed invention appears to be novel, to involve an inventive step (to be non-obvious), or to be industrially applicable have not been examined in respect of:
- ☐ the entire international application,
  - ☒ claims Nos. 4-7 (part), 1,2,8  
because:
    - ☐ the said international application, or the said claims Nos. relate to the following subject matter which does not require an international preliminary examination (specify):
    - ☒ the description, claims or drawings (*indicate particular elements below*) or said claims Nos. 4-7 (part), 1,2,8 are so unclear that no meaningful opinion could be formed (*specify*):  
**see separate sheet**
    - ☐ the claims, or said claims Nos. are so inadequately supported by the description that no meaningful opinion could be formed.
    - ☐ no international search report has been established for the said claims Nos.
    - ☐ the nucleotide and/or amino acid sequence listing does not comply with the standard provided for in Annex C of the Administrative Instructions in that:
      - the written form ☐ has not been furnished
      - ☐ does not comply with the standard
      - the computer readable form ☐ has not been furnished
      - ☐ does not comply with the standard
    - ☐ the tables related to the nucleotide and/or amino acid sequence listing, if in computer readable form only, do not comply with the technical requirements provided for in Annex C-*bis* of the Administrative Instructions.
  - ☐ See separate sheet for further details

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**Box No. V Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement**

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1. Statement

Novelty (N)	Yes: Claims	3-8
	No: Claims	
Inventive step (IS)	Yes: Claims	3-8
	No: Claims	
Industrial applicability (IA)	Yes: Claims	3-8
	No: Claims	

2. Citations and explanations (Rule 70.7):

**see separate sheet**

**Re Item III**

**Non-establishment of opinion with regard to novelty, inventive step and industrial applicability**

The term "dark fruit" used in claim 1 has no well-recognised meaning and leaves the reader in doubt about the scope of the claim. The claim is therefore not clear in the sense of Article 6 PCT.

The examination has therefore been restricted to the parts of the claims, which are clear, namely to the fruits which are defined in claim 3.

**Re Item V**

**Reasoned statement with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement**

Reference is made to the following documents:

- D1:** McMillan: "To your Health" SOFT DRINKS INTERNATIONAL, 28 July 2003
- D2:** DATABASE WPI Section Ch, Week 200254 Derwent Publications Ltd., London, GB; Class D13, AN 2002-501289 XP002332962 & CN 1 344 502 A (WANG Y) 17 April 2002 (2002-04-17)
- D3:** DATABASE WPI Section Ch, Week 200011 Derwent Publications Ltd., London, GB; Class B04, AN 2000-125456 XP002332963 & RU 2 120 295 C1 (GLUBOKII G I) 20 October 1998 (1998-10-20)
- D4:** PATENT ABSTRACTS OF JAPAN vol. 2003, no. 12, 5 December 2003 (2003-12-05) & JP 2005 013197 A (BIO ENERGY:KK), 20 January 2005 (2005-01-20)

1. The subject-matter of claims 3-8 is new in view of the documents D1-D4.
2. The document D4, which is regarded as being the closest prior art to the subject-matter of claim 1, discloses a dried kefir product which contains powders of plants and fruits (e.g. strawberry, plums). The microorganisms in the kefir are activated in the human intestines and improve the intestinal environment and increase the digestion and absorption of foods.

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(SEPARATE SHEET)**

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The subject-matter of claim 3 differs from D4 in that fruits selected from the group of blackcurrant, blackberry, strawberry, blueberry, pomegranate, plum, grape, raspberry, cranberry, redcurrant and cherry are mentioned to have a prebiotic effect.

The problem to be solved by the present invention may be regarded as to provide compositions, which have a prebiotic effect.

There is no clear hint in D4 that the plants mentioned in D4 have a prebiotic effect. Claim 3 is therefore considered to be inventive. Claims 4-8 are dependent claims and are also inventive as far as they are dependent on claim 3.